

MONTANA LEGISLATIVE HISTORY

Chapter 400 19 97

Bill H 352 S _____ Original bill & history ✓c

H. Committee on Judiciary

Hearing Date(s) 1/30 ✓c

2/13 ✓c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 3/10 ✓c

3/17 ✓c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HB 352 INTRODUCED BY SLITER, ET AL. LC0627 DRAFTER: MACMASTER

PROVIDE THAT THE OWNER OR POSSESSOR OF STOLEN PERSONAL PROPERTY OR THE OWNER OF REAL PROPERTY CRIMINALLY MISUSED WITHOUT THE KNOWLEDGE OF THE OWNER IS NOT LIABLE IN THE ABSENCE OF GROSS NEGLIGENCE FOR INJURY OR DAMAGES ARISING OUT OF THE USE OR MISUSE OF THE PROPERTY WHILE THE PROPERTY IS POSSESSED BY ANOTHER

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO JUDICIARY		
1/25	FISCAL NOTE REQUESTED		
1/29	FISCAL NOTE RECEIVED		
1/29	FISCAL NOTE PRINTED		
1/30	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	72	28
2/18	3RD READING PASSED	71	29
	TRANSMITTED TO SENATE		
2/19	FIRST READING		
2/19	REFERRED TO JUDICIARY		
3/10	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/19	2ND READING CONCURRED	50	0
3/20	3RD READING CONCURRED	47	3
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	93	7
4/11	3RD READING CONCURRED AS AMENDED	76	21
4/17	SIGNED BY SPEAKER		
4/17	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 400		
	EFFECTIVE DATE: 10/01/97		

HB 353 INTRODUCED BY BOHLINGER LC0160 DRAFTER: LANE

REQUIRE DRIVERS OF VEHICLES OUTSIDE CITIES OR TOWNS TO DRIVE WITH LIGHTED HEADLAMPS AT ALL TIMES

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO TRANSPORTATION		
2/07	HEARING		
2/08	FISCAL NOTE REQUESTED		
2/10	TABLED IN COMMITTEE		
2/13	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/27	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HB 354 INTRODUCED BY COBB LC0717 DRAFTER: PETESCH

PROVIDE THAT UNEXPENDED GENERAL FUND APPROPRIATIONS ABOVE ANTICIPATED REVERSIONS FROM A GENERAL APPROPRIATIONS ACT REVERT TO THE LONG-RANGE BUILDING PROGRAM ACCOUNT

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO APPROPRIATIONS		
1/25	FISCAL NOTE REQUESTED		
1/28	FISCAL NOTE RECEIVED		

INTRODUCED BY

BILL NO. 352

HOUSE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE ORIGINAL OWNER OR POSSESSOR OF
STOLEN PERSONAL PROPERTY OR THE OWNER OF REAL PROPERTY CRIMINALLY MISUSED WITHOUT
THE KNOWLEDGE OF THE OWNER IS NOT LIABLE FOR INJURY OR DAMAGES ARISING OUT OF THE USE
OR MISUSE OF THE PROPERTY WHILE THE PROPERTY IS POSSESSED BY ANOTHER; AND PROVIDING
AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1: Property owner's immunity from damage caused by use of property unlawfully taken. The original owner or possessor of personal property that is stolen is not liable for injury or damage arising out of the use of the property while the property is possessed by another. The owner of real property that is criminally misused by another without the owner's knowledge is not liable for injury or damage arising out of the misuse. This section includes but is not limited to the taking of a weapon by theft, robbery, or burglary directly from the person's body or from a place of residence, tent or other recreational structure, or motor vehicle or boat that is owned, possessed, or used by the person owning or possessing the weapon.

NEW SECTION. Section 2. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. Section 3. Applicability. [This act] applies to injuries and damages occurring after October 1, 1997.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB352, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

Act providing that the original owner of real property or possessor of stolen personal property or the owner of real property misused without the knowledge of the owner is not liable for injury or damages arising out of the use or misuse of the property while the property is possessed by another.

ASSUMPTIONS:

The Risk Management and Tort Defense Division does not recall any previous tort claims regarding these circumstances.

If such a claim were to arise it would be denied on the basis of no state negligence.

FISCAL IMPACT:

Fiscal impact on the state.

Paul Lewis 1-29-97
LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Paul Sliter 1/29/97
PAUL SLITER, PRIMARY SPONSOR DATE

Fiscal Note for HB352, as introduced

HB 352

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 30, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Chris Ahner (R)

Members Absent: Rep. Linda McCulloch (D)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 187 SB 24, POSTED 1/21/97
HB 352, POSTED 1/27/97
Executive Action: SB 24 BE CONCURRED IN
HB 159 TABLE
HB 257 DO PASS
HB 208 DO PASS AS AMENDED
HB 239 DO PASS AS AMENDED

HEARING ON SB 24

Opening Statement by Sponsor: SEN. WALTER MC NUTT
{Tape: 1; Side: A; Approx. Time Count: 2.3}

Proponents' Testimony:

GEN. GARY HINDOIEN, Department of Military Affairs
{Tape: 1; Side: A; Approx. Time Count: 3.0}

ROGER HAGAN, Officer and Enlisted Association
{Tape: 1; Side: A; Approx. Time Count: 4.9}

EXHIBIT 1

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 5.4 - 16.0}

Closing by Sponsor: SEN. MC NUTT
{Tape: 1; Side: A; Approx. Time Count: 16.1}

HEARING ON HB 187

Opening Statement by Sponsor: REP. ALLAN WALTERS
{Tape: 1; Side: A; Approx. Time Count: 16.7}

Proponents' Testimony:

WENDY EWING
{Tape: 1; Side: A; Approx. Time Count: 19.7}

EXHIBIT 2

RUSSELL HILL
{Tape: 1; Side: A; Approx. Time Count: 23.7}

Opponents' Testimony:

REP. DAN MC GEE
{Tape: 1; Side: A; Approx. Time Count: 24.8; Comments: REP. MC GEE read Exhibit 3 for the record.}

EXHIBIT 3

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 28.5 - End of Side A}

Closing by Sponsor: REP. WALTERS
{Tape: 1; Side: B; Approx. Time Count: 0.1}

HEARING ON HB 352

Opening Statement by Sponsor: REP. PAUL SLITER
{Tape: 1; Side: B; Approx. Time Count: 2.8}

EXHIBITS 4 & 5

Proponents' Testimony:

A. ELWELL, Northwest Arms Collectors, Weapons Collectors of Montana
{Tape: 1; Side: B; Approx. Time Count: 13.2}

HENRY ELLIOTT, Law Enforcement

{Tape: 1; Side: B; Approx. Time Count: 16.2}

Opponents' Testimony:

RUSSELL HILL, Montana Trial Lawyers Association

EXHIBIT 6

{Tape: 1; Side: B; Approx. Time Count: 17.5}

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 24.3 - Tape 2; Side A; 43.2}

Closing by Sponsor: REP. SLITER

{Tape: 2; Side: A; Approx. Time Count: 43.3 - Tape 2; Side A; 1.4}

EXECUTIVE ACTION ON SB 24

Motion/Vote: REP. WYATT moved SB 24 BE CONCURRED IN. The motion carried 16 - 0. REP TASH will carry the bill.

{Tape: 1; Side: A; Approx. Time Count: 2.6}

EXECUTIVE ACTION ON HB 239

Motion: REP. DAN MC GEE moved HB 239 DO PASS.

{Tape: 2; Side: B; Approx. Time Count: 3.5}

Motion/Vote: REP. MC GEE moved amendments to HB 239. EXHIBIT 7
The motion carried by unanimous voice vote.

Motion/Vote: REP. MC GEE moved substitute wording of the amendments to strike "his or her own signature." and insert, "the notary's own signature." The motion carried by unanimous voice vote.

Motion/Vote: REP. MC GEE moved HB 239 DO PASS AS AMENDED. The motion carried 16 - 0.

EXECUTIVE ACTION ON HB 208

Motion: REP. DEB KOTTEL moved HB 208 DO PASS.

EXHIBIT 8

{Tape: 2; Side: B; Approx. Time Count: 7.7; Comments: Exhibit 8 was distributed concurrent with Executive Action as information.}

Discussion:

{Tape: 2; Side: B; Approx. Time Count: 10.1; Comments: The committee delayed action on the bill pending a comparison with HB 100 and considered referring it to the Select Committee on Corrections for consideration.}

EXECUTIVE ACTION ON HB 159

Motion: REP. DUANE GRIMES moved HB 159 DO PASS.

{Tape: 2; Side: B; Approx. Time Count: 14.7}

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 13, 1997, at 8:00 AM, in Room 312-2.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 270, HB 323, HB 432
POSTED 2/5/97
Executive Action: HB 432 TABLED
HB 325 DO PASS
HB 415 ACTION POSTPONED

HEARING ON HB 270

Opening Statement by Sponsor: REP. "BOB" REAM **EXHIBIT 1**
{Tape: 1; Side: A; Approx. Time Count: 4.4; Comments: This set of minutes was recorded on 90-minute tapes.}

Motion/Vote: REP. MC GEE moved HB 432 be tabled. The motion carried by unanimous voice vote.

EXECUTIVE ACTION ON HB 325

Motion/Vote: REP. KOTTEL moved HB 325 be reconsidered. The motion carried 12 - 1.

[Tape: 3; Side: B; Approx. Time Count: 30.6; Comments: This action was taken since the amendments passed previously were in error, John MacMaster explained the reason for the need for change.]

Motion/Vote: REP. "SONNY" HANSON moved HB 325 DO PASS.

Motion/Vote: REP. HANSON moved to strike the previous committee amendment of 2/12/97. The motion carried 13-0.

Motion/Vote: REP. HANSON moved HB 325 DO PASS amended to its original form. The motion carried 10-3, REPS. ELLINGSON, HURDLE and WYATT voting no.

[Tape: 3; Side: B; Approx. Time Count: 32.0]

[Tape: 3; Side: B; Approx. Time Count: 32.1; Comments: REP. HANSON made a point of personal privilege.]

EXECUTIVE ACTION ON HB 415

Motion: REP. CURTISS moved to reconsider HB 415.

Discussion:

[Tape: 3; Side: B; Approx. Time Count: 33.0; Comments: REP. CURTISS withdrew her motion and it was decided to delay action to replace HB 415 with a committee resolution.] EXHIBIT 27

Motion/Vote: REP. HANSON moved to adjourn. The motion carried by unanimous voice vote.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 12, 1997, at 7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Boharski was excused until 8:00 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 365, HB 396; POSTED 2/6/97
Executive Action: HB 396 DO PASS
HB 337 DO PASS AS AMENDED
HB 352 DO PASS AS AMENDED
HB 346, HB 415 TABLED
HB 325, DO PASS AS AMENDED*

EXECUTIVE ACTION ON HB 352

Motion: REP. ANDERSON moved HB 352 DO PASS.

{Tape: 1; Side: A; Approx. Time Count: 4.3; Comments: This set of minutes is recorded on 90-minute tapes.}

Motion: REP. MC GEE moved to amend HB 352 to strike "original" on lines 4 and 13 and strike remainder of line 16 through "weapon" and insert "property taken" and replace "weapon" with "property."

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 4.8}

Vote: The motion carried 11 - 7; REPS. WYATT, MC CULLOCH, PEASE, KOTTEL, SANDS, ELLINGSON and HURDLE voting no.

Motion/Vote: REP. MC GEE moved HB 352 DO PASS AS AMENDED. The motion carried 11 - 7; REPS. WYATT, MC CULLOCH, PEASE, KOTTEL, SANDS, ELLINGSON and HURDLE voting no. (REPS. BOHARSKI and GRIMES were not present and did not vote.)

{Tape: 1; Side: A; Approx. Time Count: 10.8; Comments: The motion and vote were preceded only by clarification discussion.}

EXECUTIVE ACTION ON HB 415

Motion: REP. CURTISS moved HB 415 DO PASS.

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 11.5}

Motion/Vote: REP. ANDERSON moved to table HB 415. The motion carried 12 - 6; REPS. WYATT, CURTISS, AHNER, BERGMAN, SMITH and CLARK voting no. (REPS. BOHARSKI and GRIMES were not present and did not vote.)

EXECUTIVE ACTION ON HB 346

Motion: REP. DIANA WYATT moved HB 346 DO PASS.

{Tape: 1; Side: A; Approx. Time Count: 15.4}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 15.5 - 17.6}

Motion: REP. WYATT moved the Department of Justice amendments.

{Tape: 1; Side: A; Approx. Time Count: 17.7}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 17.8}

Motion/Vote: REP. GRIMES moved to table HB 346. The motion carried 19 - 0.

EXECUTIVE ACTION ON HB 337

Motion: REP. LOREN SOFT moved HB 337 DO PASS.

{Tape: 1; Side: A; Approx. Time Count: 23.8}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 24.0}

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN LORENTS GROSFIELD**, on March 10, 1997, at 9:00 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 325, HB 343, HB 352, posted
March 4, 1997
Executive Action: None

HEARING ON HB 352

Sponsor: REP. PAUL SLITER, HD 76, Somers

Proponents: Chip Erdmann, as a Montana citizen
Rod Carey, Helena attorney
Alfred Bidwell, Weapons Collectors Society and
Northwest Arms Collectors
REP. MATT BRAINARD, HD 62, Missoula

Opponents: Tim Kuntz, Legislative Intern, Montana Trial
Lawyers Association (MTLA)

Robert Heinle. If you read further down it says, "based on evidence available", so I don't see where it eliminates me from including the primary aggressor.

VICE CHAIRMAN GROSFIELD. Does Section 8 only apply to employees and volunteers of shelters and crisis lines, and not the first call to the police station? **Kathy Sewell.** Yes.

VICE CHAIRMAN GROSFIELD. Will **SEN. NELSON** carry this bill? **REP. GRIMES.** Yes.

VICE CHAIRMAN GROSFIELD. We had an earlier bill pointing at how much a disaster this section of law is. How was this received in the House? **REP. GRIMES.** We did discuss this. The issue of why we're assessing a fee came up, and it was generally concluded that "where else would we apply the fee, if not here?" I believe the House thought the \$30 fee to be legitimate. I do understand your concerns.

VICE CHAIRMAN GROSFIELD. The policy issue is, do these fees directly relate to the program being funded? I believe it is a bit of a stretch.

Closing by Sponsor: **REP. GRIMES.** I want to thank the Committee for a good hearing. Many families with kids have been assisted by this program. This is a victim's rights bill.

{Tape: 2; Side: A; Approx. Time Count: #24.4; Comments: 10:52 a.m.}

In the House we addressed the primary aggressor. A representative said his brother was chased by his wife with a kitchen knife, so the brother grabbed her wrists which resulted in bruises to her, and he was arrested, too. We can also include statements by witnesses.

I have the same opinion of earmarking you have, so we have looked at other alternatives, but couldn't seem to find one. The shelters need funds, and there were 700-plus actual convictions occurring in Montana last year. It is essential and cost-effective to have a minimum level of support in these shelters, so I asked you to discuss that issue as severable from the rest of the bill.

SEN. CRIPPEN RESUMED THE CHAIR AT THIS POINT IN THE HEARINGS.

{Tape: 2; Side: A; Approx. Time Count: #29.5; Comments: 10:57 a.m.}

HEARING ON HB 325

Sponsor: **REP. MATT BRAINARD, HD 62, Missoula**

Proponents: **REP. DEB KOTTEL, as a citizen**

Discussion:

Ms. Lane explained this occurred on page 9, line 14. The amendment would strike subsection (iv) which referred to when deciding who was the primary aggressor they would look at the relative sizes and apparent strength of each person.

Motion: SEN. HALLIGAN MOVED TO FURTHER AMEND HB 343.

Vote: The MOTION FAILED.

Motion: SEN. GROSFIELD MOVED HB 343 BE CONCURRED IN AS AMENDED.

Vote: The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 352

{Tape: 1; Side: a; Approx. Time Count: 8:26; Comments: .}

Amendments: hb035201.avl - EXHIBIT 3

Motion: SEN. DOHERTY MOVED HB 352 BE AMENDED.

Discussion:

SEN. DOHERTY would add the word "reasonably" before unforeseeable. The language would then be "The owner is not liable for injuries or damage arising out of the use of the property while the property is possessed by another if the misuse or use was reasonably unforeseeable."

CHAIRMAN CRIPPEN asked the meaning of "reasonably unforeseeable".

SEN. DOHERTY stated that would be the standard by which the person would figure out the amount of care which is necessary to prevent negligence. If there is theft, the sponsor felt that automatically broke the causation chain. If someone is irresponsible and it was reasonably foreseeable that a certain result would occur as a result of their irresponsibility they potentially could be held liable. "Reasonably unforeseeable" would be a negligence standard. SEN. GROSFIELD'S amendment would be either above or below.

SEN. WALTER MCNUTT stated that if property is stolen, either amendment could cause mischief. He felt the amendments would say that it is okay to steal. Stealing is illegal.

SEN. DOHERTY explained that there is a doctrine called an attractive nuisance. The person who has a swimming pool and makes an effort to keep children out so they are not injured, is reasonable and prudent. A construction company which stores dynamite has a higher degree of responsibility to lock the area where the blasting caps are stored than he would for his guns. The construction company which stores dynamite in packages which

say "dynamite" and it is then stolen by children and someone is injured, the fact that the company kept a dangerous substance out in the open should not absolve them of liability. Stealing should break the chain of causation.

CHAIRMAN CRIPPEN felt that would be mixing negligence with gross negligence.

SEN. DOHERTY stated that depended on the circumstance. If this was stored on a ranch away from people and a trespasser found it, as long as there was a closed door that would meet the reasonable standard. If this was stored on the west edge of Great Falls next to Valley View subdivision where there are numerous children, this would not be a reasonable thing to do.

SEN. MCNUTT felt that the cowboys should be able to keep their rifles. He felt that stealing is against the law.

CHAIRMAN CRIPPEN stated that the bill as written is a no standard bill. The amendments would add degrees of negligence. SEN. DOHERTY's amendment would be ordinary negligence while SEN. GROSFIELD's amendment would be gross negligence.

SEN. DOHERTY stated that the Supreme Court decision did not subject anyone to anything that they haven't been subjected to before. If someone steals his gun and commits a crime, he doesn't think he could be held negligent. Where does his personal responsibility to the rest of society begin? This bill states that once theft occurs, he would be totally immunized.

SEN. HALLIGAN stated that this should be left with weapons only. Why should this be left up to every other piece of personal property?

SEN. BARTLETT stated that the bill reached a lot further than the intent of the sponsors. The concern that the sponsors had was also a concern which the Supreme Court acknowledged would arise in stating that they were not saying what they thought the popular interpretation of their opinion would say that they were saying.

{Tape: 1; Side: b; Approx. Time Count: 8:48; Comments: .}

SEN. BARTLETT explained that the statutes define negligence as a want of the attention that a prudent man would ordinarily give in acting in his own concerns. There is no definition of gross negligence. Do we want to say that the people of this state do not owe each other a want of the attention that a prudent man would ordinarily give when acting in his own concerns?

CHAIRMAN CRIPPEN expressed that gross negligence may not be defined by statute, but certainly was defined by case law.

SEN. BARTLETT commented that the majority opinion stated that the care required is always reasonable care. This standard never varies, but the care which it is reasonable to require varies with the danger involved in the act and is proportionate to it. The greater the danger, the greater the care which must be exercised. When you have a loaded firearm, there is a greater danger than if you have a rock.

SEN. DOHERTY withdrew his motion to amend.

Amendment: hb035202.avl - EXHIBIT 4

Motion: SEN. DOHERTY moved SEN. GROSFIELD's amendment.

Vote: The MOTION CARRIED with SEN. SHARON ESTRADA and SEN. MCNUTT voting no.

Discussion:

SEN. BARTLETT was puzzled with the sentence dealing with real property. She questioned why it was in the bill? This stated that the owner of real property which is criminally misused by another without the owner's knowledge, is not liable for injury or damage arising out of the misuse.

SEN. MCNUTT clarified that someone could trespass into someone's home, break into the liquor cabinet, and then leave and get into a car wreck.

SEN. DOHERTY stated that breaking a rule or regulation by itself was negligence per se. You then have to figure out if the negligence caused the accident. By adding the wording "gross negligence" we would not block out negligence per se.

SEN. GROSFIELD questioned that other than attractive nuisance, what could lines 22 and 23 apply to?

CHAIRMAN CRIPPEN stated that a liquor cabinet in someone's house would not be an attractive nuisance. A swimming pool could be an attractive nuisance. There is a common law rule on attractive nuisance. The landowner has an obligation not to provide an attractive nuisance. We do not want to eliminate that because it has very little to do with theft.

SEN. DOHERTY questioned what the standard would be for holding a landowner liable in the recreational context?

SEN. GROSFIELD felt that statute stated that an owner who grants permission to use property for recreational purposes is not liable for an injury which arises during the use or as a result of the use.

SEN. AL BISHOP questioned whether the theft would get him off the hook?

SEN. HALLIGAN felt that this would affect the doctrine of attractive nuisance. This takes in way too much. The bill should have focused on a weapon and not include all real property, personal property, etc. The intent is unclear.

SEN. GROSFIELD questioned if under current law there was a criminal misuse of real property, would there be any liability for the owner?

Ms. Lane suggested the amendment state that this section does not affect or amend the common law doctrines of negligence per se or attractive nuisance.

Motion: SEN. HALLIGAN MOVED HB 352 BE FURTHER AMENDED.

Vote: The MOTION CARRIED UNANIMOUSLY.

Motion: SEN. GROSFIELD MOVED HB 352 BE CONCURRED IN AS AMENDED.

Vote: The MOTION CARRIED with SEN. BARTLETT, SEN. HALLIGAN, and SEN. DOHERTY voting no.

HEARING ON HB 44

{Tape: 1; Side: b; Approx. Time Count: 9:07; Comments: .}

Sponsor: REP. CHARLES DEVANEY, HD 97, Plentywood

Proponents: Lois Adams, Department of Corrections

Opponents: None

Opening Statement by Sponsor:

REP. CHARLES DEVANEY, HD 97, Plentywood, introduced HB 44. In Montana State Prison and the Women's Correctional Facility there are criminal actions going on with prison checking accounts. What happens is a person who is selling drugs will tell a prospective buyer that since they both have an account on the outside, all that needs to be done is to transfer "x" number of dollars from your account through a third party or directly into my account and once I receive confirmation of the transaction, I will give you the drugs or whatever commodity they are trading. The other account is the in-system account. A group may approach an inmate and say that they promise not to pump you anymore, if you will transfer "x" number of dollars from your account to my account. House Bill 44 states that an inmate, while in the correctional facility - either Montana State Prison or the Women's Correctional Facility - will maintain their checking account in the in-system account procedure. They cannot accumulate, without Department approval, any amount of money in excess of \$200. Should they accumulate more and the Department does not feel it is proper for them to have that much money, the Department has the authority to take funds in excess of \$200 and